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12 ZYXEL COMMUNICATIONS UK LIMITED

13 and ZYXEL COMMUNICATIONS A/S

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re APPLICATION OF ZYXEL  
COMMUNICATIONS UK LIMITED and  
ZYXEL COMMUNICATIONS A/S FOR AN  
ORDER PURSUANT TO 28 U.S.C. § 1782  
GRANTING LEAVE TO OBTAIN  
DISCOVERY FROM BROADCOM INC.  
and BROADCOM CORP. FOR USE IN  
FOREIGN PROCEEDINGS

Civ. A. No. 19-mc-080175

**NOTICE OF NEW DEVELOPMENT IN  
RELATED CASE**

On July 18, 2019, counsel for ZyXEL were informed by ZyXEL's lawyers in England  
that the Court of Appeal (Civil Division) had that day entered a judgment holding that the RAND  
declarations sought by the claimant, TQ Delta, LLC, had no real prospect of success. (Second  
Marfé Decl. ¶ 2 & Ex. 1). The result of this judgment is that the RAND trial referenced in the  
memorandum in support of ZyXEL's application will not go forward in September 2019.  
(Second Marfé Decl. ¶ 3). ZyXEL's English lawyers understand that TQ Delta may seek leave  
from the UK Supreme Court to appeal the Court of Appeal's decision. (Second Marfé Decl. ¶ 3).

NOTICE OF NEW DEVELOPMENT

1 Thus it is still unclear whether a RAND trial will ultimately take place in the English  
 2 proceedings. (Marfé Decl. ¶ 4).

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 4 Because TQ Delta may appeal the Court of Appeal's decision, the information ZyXEL  
 5 seeks in this application remains relevant, the English proceeding remains pending, and this  
 6 application remains important to ZyXEL. See *In re Application of Khrapunov*, 2018 WL  
 7 3239001, at \*4 (N.D. Cal. 2018) (proceedings are still "pending" for purposes of 28 U.S.C. §  
 8 1782 even when the applicant has lost its foreign case and has appealed). Moreover, the English  
 9 action TQ Delta filed against ZyXEL in March 2019 and referenced in the memorandum ZyXEL  
 10 submitted in support of its application is still pending (ECF 2 at 3), and the evidence ZyXEL  
 11 seeks is for use in that action, too, if any appeal by TQ Delta succeeds. (Second Marfé Decl. ¶ 5).

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 13 For these reasons and the reasons set out in the memorandum in support of the  
 14 application, ZyXEL respectfully requests that the Court grant its application.  
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16 By its attorneys:

17  
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